

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

DOUGLAS DEVELOPMENT
CORPORATION AND DOUGLAS JEMAL
Respondents

Case Nos.: I-02-12211
I-02-12225

FINAL ORDER

By Notice of Infraction (No. 12211) the Government charged Respondents Douglas Development Corporation and Douglas Jemal with the following violations of the District of Columbia Municipal Regulations (“DCMR”): 21 DCMR 502.1 (failure to obtain building permit before engaging in earth movement or land disturbing activity that requires an approved erosion and sedimentation plan); 21 DCMR 526.1 (engaging in any earth movement or land disturbing activity without instituting appropriate storm water management measures); and 21 DCMR 539.4 (failure to place adequate erosion control measures before and during exposure). The Notice of Infraction alleged that the violation occurred on August 27, 2002, at a construction site at the unit block of “O” Street and the 1300 block of North Capitol Street, N.E. (the “Property”), and fines in the total amount \$1,100 were sought, pursuant to 16 DCMR §§ 3234.1(a), 3234.1(c) and 3234.2(y).

Respondents did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on October 18, 2002, this administrative court

issued an order finding Respondents in default and subject to statutory penalties totaling \$1,100, in addition to the authorized fines of \$1,100, and requiring the Government to serve a second Notice of Infraction. D.C. §§ 2-1802.02(f) and 2-1801.04(a)(2)(A). The Government served a second Notice of Infraction (No. 12225) on October 25, 2002, which Respondents answered with a timely plea of Deny.

On January 29, 2003, the parties filed a “Consent Motion For Issuance of Consent Order” with a proposed “Consent Order” in settlement of this matter. Under the settlement, Respondents have paid fines in the total amount of \$1,100 by check No. 13178 dated January 17, 2002, from Leibner & Potkin, PC, payable to the D.C. Treasurer, and they promise to do the following: (1) fully comply with any and all permitting, storm water management and sediment control requirements imposed by District of Columbia laws and regulations prior to the continuation or resumption of any development efforts at the Property; and (2) on or before March 1, 2003, install vegetative stabilization at the Property, in accordance with the District of Columbia Department of Consumer Regulatory Affairs 1987 Standards and Specifications for Soil Erosion Control.

It appears that the terms of the settlement are not unlawful, unreasonable or inequitable, *Moore v. Jones*, 542 A.2d 1253, 1254 n.1 (D.C. 1988), and the Government has unambiguously consented to the suspension of the statutory penalties. *DOH v. Towne Terrace East*, OAH No. I-00-30247 at 4-5 (Final Order, July 8, 2002). Provisions of the settlement, however, require undertakings by Respondents in the future, the enforcement of which are beyond the powers vested in this administrative court, except to the extent there is a violation of District of Columbia laws or regulations within the jurisdiction of this administrative court and a Notice of Infraction is served on Respondents. Accordingly, while I will approve the settlement, I must

simply dismiss the case. In the event of a breach of the settlement agreement, the Government will have available to it whatever rights and remedies are provided under the law, including, but not limited to, the filing of a Notice of Infraction with this administrative court.

Therefore, it is this _____ day of _____ 2003:

ORDERED, that the parties' settlement agreement, as set forth in their Consent Motion and proposed Consent Order, is **APPROVED**; and it is further

ORDERED, that this case is hereby **DISMISSED**, subject to the right of any party to move within 14 days of the date of service of this order to reinstate the case.

/s/ 02/19/03

Robert E. Sharkey
Administrative Judge